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before the

SEP - 3 1997 **FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

FCC MAIL ROOM

COMMENTS IN OPPOSITION

In the Matter of:

Amendment of Parts 0 and 1 to) RM-9150
create a private sector Compliance)
Procedure Agency and entity.)

In its Petition for Rule Making, the American Radio Relay League (ARRL) proposes sweeping changes to allow the ARRL to establish a private sector radio police force, which would gather evidence or process complaints and seek evidence, of rules violations by Radio Amateurs licensed by the Commission. Such action, if adopted by the Commission, would likely lead to serious breach of Government enforcement obligations, and create a system of arbitrary capricious, superfluous and egregious actions and counter actions, promulgated for individual and political agenda of League Officials, individuals and groups, creating an unworkable, and expensive extralegal administrative burden to the ARRL, which openly confesses it cannot fund its own primary services. The last thing Ham Radio needs is a collection of self righteous self appointed "Barney Fife" and "Deputy Dawg" radio Gestapo agents, armed with Government approval and their own interpretation of the FCC's rules, performing interdiction, investigation, invasion of privacy, and violation of Constitutional rights, covered by Federal immunity as performing quasi Government work, with few limitations, no legal recourse, no individual responsibility, and no control through disinterested third party adjudication. This is a bad idea that should not see the light of day. No one would condone malicious interference (MI) or other causative violations, but the approach of the ARRL is to use an atom bomb to kill a flea on the back of an endangered species.

The ARRL, in its own petition states that the impetus for their petition is action purported to be created by a "very very small" number of individuals. One must therefore ask, why is an upheaval of current Juris prudence, Federal adjudication and Federal compliance procedures for what the Petitioner states is a microscopic problem, barely of notice to the FCC or anyone else required?

The ARRL already has in place it's Official Observer program (OO) which works in cooperation with the FCC Field Offices that monitors and bring to notice, those individuals who may be in minor violation of the FCC rules, in order to maintain ham operations in a legal and responsible manner. The ARRL's bringing of this new Petition before the FCC is either a statement that the OO program is a failure, or a means to a further end, the ARRL's control of Ham Radio in new ways as a separate legal system with additional administrative and service obligations and expenses for the ARRL and at the commercial disadvantage to its competitors.

The ARRL states that the League would administer the complaint and compliance portion without notice to the station that the complaint is about, until the ARRL has determined that the

evidence gathered by the ARRL warrants Federal processing and adjudication. In other words, the ARRL will spy on stations, using its own chosen network of individuals, and in its sole discretion, determine if a case of interference is purposeful (MI) causative and egregious, before the station on which the file is being kept is informed of the actions. In the scenario of the ARRL's petition, the ARRL performs the services of the FBI, to use its deputized agents to spy and gather secret files on individual stations. If and when the ARRL has gathered enough evidence (in its own judgement) to present a case to the Government, or to act on its own under Government auspices, only then is the station informed that such a file exists. Noting the Freedom of Information Act, not even the FBI can do such work without warrants issued or probable cause. Thus the actions constitute Police Action, and a violation of Federal Constitutional guarantees that prevent the invasion of privacy, trespass, and the accumulation of secret "hit lists" by Government agencies. The ARRL can offer no guarantee nor prevent abuse of their proposed system, and disenfranchises the right of recourse through normal means.

Further, there is no disinterested third party adjudication or process to protect those who may be wrongfully charged. While the ARRL states a procedure in which the party making the initial charge may be held accountable for bringing false charges, the deterrents to such action are minimal and limited. A person wrongfully accused will have already expended considerable time, effort and monies in defense. The ARRL's own petition notes that it is likely that there would be false charges brought by individuals and groups due to personal or political agendas. This must also include the ARRL's own agendas and political aspirations. The value to having a Federal employee perform the work of compliance and complaint adjudication is, as with any legal system, the adjudicator has NO PERSONAL INTEREST to conflict with the case brought before it. Such are NOT the circumstances when the parties all have an inherent stake in the outcome of the process, and therefore has a built in bias and self interest agenda, regardless of the specifics of each case so presented. The ARRL would promote itself as sole judge, jury and arbiter in matters that reflect on ARRL policy, bandplans, business and personal agendas. One need only look to the creation of the NFCC (National Frequency Coordination Council) created, incorporated and funded by the ARRL, to see the avarice, self serving and political agendas of the individuals elected to operate and direct the actions of this self-appointed group. In the words of one of its creators, Dick Isley, "We need this forum to exchange ideas without the necessity of having to defend ourselves in public. The various Klingons and Romulans will eventually pick up the gist of what is said, but by the time they do, the information will either be out of date, discarded or agreed upon, so that their observations will not carry much weight." A statement of deceit, subterfuge and malice, uttered and recorded in public made by the President of the Illinois Repeater Council, Midwest Amateur Coordinating Council and NFCC. No clearer statement of deceit and deception or of secret political and personal agendas could have been made. Yet this person's efforts are supported, funded and protected by the ARRL executive staff and directors. These same ARRL executives and directors who would unabashedly administer the complaint and compliance system they propose in their petition.

Other similar utterances were publicly made by various FC's at a meeting near St. Louis attended by most ARRL executive officers and FCC representatives. In that meeting, a clear intent to disenfranchise large segments of FCC license holders, and to use Federally invoked powers to be held by the ARRL sponsored, funded and incorporated NFCC, and/or by the ARRL to eliminate, ignore and otherwise violate license privileges of those not a part of their chosen group was expressed, adopted and accepted by the soon to be NFCC officers and ARRL

executives.

Further, the ARRL petition, sets up a system that interdicts and usurps the individuals right to directly petition the Government, and sets the ARRL as a quasi Government agency, with its own unmonitored and ungrieveable rules, policies and procedures, with no recourse except expensive civil suit in Federal Court, which may yet be prevented under the latest Federal Law, which prevents such action against individuals and groups who perform Government work as volunteers. Thus reducing, or eliminating numerous paths of recourse, necessary adjudication of grievance, and would promote abuse and misuse of the very processes it generates, which the ARRL admits must be guarded against.

The petition also fails to express how the ARRL will fund and guarantee continuous operation of this new bureaucracy. The ARRL in its latest Director meeting minutes says that it is concerned that it has no permanent in-place funding to even guarantee its own primary operations, to wit "the League must find ways to fund various basic operations regardless of variances in resources" and has endeavored to raise additional funds through various mailings asking current members and life members to contribute for various activities that the ARRL cannot fund itself. Thus the financial stability of the petitioner's own enterprise must be questioned and it must be determined if the ARRL can in fact provide the necessary funds to internally administer and service over 750,000 Commission licensee's when it cannot even guarantee service to its own 170,000 members. Only a full examination and audit of the ARRL's books and business practices could determine if the financial capability exists, is likely to exist, or the posting of a performance bond of sufficient value must be required to insure that such activities are not abruptly terminated, bankrupted by litigation or poor business practices.

Moreover, the ARRL failed to state the current cost to the Commission for enforcement activities, paid for by Tax Dollars from the citizens of the United States, which is expended for ham radio related cases, to provide any financial basis for its government cost reduction claims. If, in fact, as the ARRL alludes, the FCC has spent nearly no funds in providing nearly no enforcement activity, then there is in fact no tax payer savings to justify the abandonment of Federal services in favor of private sector services. In addition, since the ARRL is supported by less than 25% of licensed hams, and nearly 40,000 members are life members, who contribute no continuing income to the ARRL, the cost burden to administer complaint and compliance for over 750,000 FCC licensees, falls on a disproportionate 130,000 licensees, or roughly 17% of current license holders. This represents more than a 5:1 cost to benefit ratio for those "paying the freight." Certainly this creates an expensive endeavor with no prospect of recovery of expenses.

The ARRL would also have a built in conflict of interest issue on financial grounds, since the creation of such a law enforcement entity as ARRL proposes, provides it with information and powers its commercial competitors would not have, giving it unfair advantage in support of its main purpose as a commercial publisher of ham radio books, magazines and training materials. The ARRL could use its position as "the law" to enhance and promote its materials over those of equal validity and value published by others.

In fact, the entire ARRL proposal is a sham and an abuse of the FCC's processes. Concocted and carefully crafted to appear as a service to the FCC, based on the "need" to correct an insignificant number of IM problems, with no evidence stated as to the extent, severity, number and type of such problems existing or existed, nor any statement on how such stated "very very few" cases of IM actually cause grievous harm, deterioration of service, public endangerment, or nuisance, and how such cases impinge on the rights, services or public

obligations of non hams.

As senior FCC staffer John Johnston stated at the Dayton Hamvention over a decade ago, there are no sanity tests given as part of becoming an FCC licensee. There are rare instances of stolen equipment being improperly used by non licensees, and rare instances of improper operation by FCC license holders. While these are regrettable, they are no more reducible or subject to elimination by action of the FCC or ARRL. These rare instances exist because, in part, of conflicts between license holders, due to ambiguous or conflicting interpretations of ARRL promulgated bandplans, FCC rules concerning Frequency Coordinators, (FC) and the ARRL's refusal to even acknowledge various Frequency Coordination entities established after a "magic date" many years ago. The ARRL's refusal to accept data from locally recognized FC's or to even publish data lead to conflicts that could be avoided. Further, the ARRL's failure to allow recognition of changing of local FC's and their support of MACC, as one of the official "recognizing bodies" of the ARRL's NFCC, which also refuses to cooperate and recognize the efforts of FC's, operating under the FCC rules exacerbates the problems the ARRL says it will administer and adjudicate with the extra-governmental powers they seek in their petition.

First the ARRL creates the problem, then the ARRL creates the petition to administer its own program to solve the problem it created! The Fox guarding the hen house, and another built in conflict of interest for the ARRL. For example, Indiana has a FC body which is recognized, supported and operates under the FCC rules for FC entities, representing over 200 repeater owners. Yet the ARRL and its supported, funded and incorporated NFCC refuses to acknowledge or cooperate or publish the data provided by the Indiana FC entity (MISMA). Such action by the ARRL, NFCC, MACC, is a direct contributor to circumstances that can generate the abuses and violations ARRL says it will adjudicate and investigate. In other words, the ARRL refuses to solve a significant source of the problems it says exist (albeit "very very few") through a simple internal administrative action it alone controls, and requests the FCC to grant it special powers and privileges, in gross excess of those needed, to solve the very same problem. If the ARRL simply published the data, and recognized all supported FC's rather than selecting the "politically correct" entities as it has done to date, many of the "very very few" problems would not exist. Simply put, the ARRL has FAILED to provide the leadership and responsibility it should already be using and desires special powers and privileges that impinge, interdict and interfere with license holders privileges and Federally guaranteed rights.

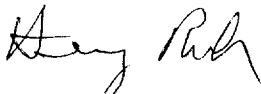
The ARRL itself has promoted illegal use of and manufacture of transmission equipment. In recent months, the ARRL, through its official publication QST, ran a series of three articles by North Country Radio. The articles describe how to build a video transmitter, based on kits and fully assembled equipment sold by North Country Radio. With this one exception, North Country Radio markets the same exact equipment, plus numerous amplifiers, antennas and accessories through its catalog and other advertisements in publications read primarily by non hams, namely movie and television professionals, police and private detectives, and other non hams. Complaints of these ads that promote the illegal use of "ham" transmitters have been forwarded to the Commission and to the ARRL. QST also publishes ads by other manufacturers who offer both legal ham equipment and offer illegal equipment, for transmission on FM and TV broadcast frequencies and other non ham frequencies, thus promoting the violation of FCC rules and regulations. This act alone should disqualify the ARRL from being any representative or enforcer of FCC rules as it clearly demonstrates that the ethics of the ARRL are swayed by the advertising income generated by these ads in QST and other ARRL publications. An example of these

devices include TV transmitters designed and sold to operate illegally on the UHF TV channels by Ramsey Electronics, Rainbow Electronics and others.

SUMMARY:

The ARRL already has the resources necessary to eliminate many of the circumstances that lead to the IM problem it seeks to "solve." The ARRL has failed to make a convincing case that the ARRL alone requires special powers and privileges to solve an exceedingly microscopic problem. The ARRL has failed to express in concrete terms, how anyone would benefit from its actions under the special power and privileges it proposes. The ARRL has failed to establish any credible financial data on the tax payer savings, nor its own costs to administer the actions it proposes, and has publicly stated its own financial instability and inability to even continue to conduct its own business in a confident and continuous manner. The ARRL is unethically fit to be a guardian of the FCC rules and regulations. The ARRL is simply seeking to obtain commercial advantage over its commercial competitors, and extend its control of ham radio activities in ways that significantly diminish the rights and privileges of all license holders in an effort to correct misfeasance or malfeasance of a handful of individuals. The actions, organizations and remedies requested by the ARRL are not required, needed or desired, contain obvious conflict of interest issues, and eliminate the legal standard of an impartial third party to adjudicate grievances, creates a radio "secret police" and will foster further distrust in the ARRL, and among fellow license holders (who is spying on whom) and its funded agent corporation NFCC. The ARRL is seeking to create yet another bureaucracy and layer of Government, unnecessary to solve the issues it purports to solve.

Respectfully Submitted



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